

REMARKS

Claims 76-103 are pending and under consideration in the instant application. The Advisory Action mailed September 26, 2003, states that Applicants' Amendment and Response filed September 10, 2003, has overcome rejections based on 35 U.S.C. § 112, second paragraph (indefiniteness), 102(e) (over U.S. Patent No. 6,004,925) and 102(a) (over WO 99/16459). With this response, Claim 76 has been amended. After entry of the instant amendment, Claims 76 and 78-103 are pending and under consideration. Applicants Petition to Accept an Unintentionally Delayed Claim for Priority under 37 C.F.R. §1.78 has been granted.

II. AMENDMENT OF THE CLAIM

Claim 76 has been amended, in relevant part, to clarify, that at least one L-enantiomeric residue of formula I other than Pro (P) at X₁ is replaced with an identical D-enantiomeric residue. Support for amended Claim 76 can be found in Claim 1 as originally filed and page 44, lines 15 to 29.

Applicants submit that currently amended Claims 76 is fully supported by the specification and does not introduce new matter. Applicants respectfully request entry of the amendment.

III. OBJECTION

Claims 76-103 are objected to for alleged redundancy as to X₁ being Pro or D-pro with the recitations that at least one residue of the peptide or peptide analogue can be a D-enantiomeric residue.

Applicants have amended Claim 76, as discussed above, to recite, in relevant part, that at least one L-enantiomeric residue of formula I other than Pro (P) at X₁ is replaced with an identical D-enantiomeric residue. Applicants submit that Claim 76 is not redundant and respectfully request that the objection be withdrawn.

IV. DOUBLE PATENTING

Claims 76-103 stand rejected under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over U.S. Patent Nos. 6,265,377 and 6,037,323.

A. U.S. Patent No. 6,265,377

Claims 76-103 stand rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly being unpatentable over Claims 1-48 of U.S. Patent No. 6,265,377 ("the '377 patent"). The PTO contends that although the conflicting claims are not identical, they are not patentably distinct because the '377 patent allegedly anticipates the claims of the subject application in that the '377 patent claims compounds having the same structure and amino acid sequence in which X₁ can be D-pro. Applicants have amended Claim 76, as discussed above and submit that the pending Claims are patentable over the Claims of the '377 patent. Applicants respectfully request that the rejections be withdrawn.

B. U.S. Patent No. 6,037,323

Claims 76-103 stand rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly being unpatentable over Claims 1-54 of U.S. Patent No. 6,037,323 ("the '323 patent"). The PTO contends that although the conflicting claims are not identical, they are not patentably distinct because the '323 patent allegedly anticipates the claims of the subject application in that the '323 patent claims compounds having the same structure and amino acid sequence in which X₁ can be D-pro. Applicants have amended Claim 76, as discussed above and submit that the pending Claims are patentable over the Claims of the '323 patent. Applicants respectfully request that the rejections be withdrawn.

V. PETITION TO ACCEPT AN UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY

Applicant's petition for acceptance of a claim for late priority under 37 C.F.R. § 1.78(a)(3) has been granted. Applicants amendment to the first sentence of the specification to include reference to the prior-filed nonprovisional application has been acknowledged.


CONCLUSION

Applicants submit that Claims 76 and 78-103 satisfy all of the criteria for patentability and are in condition for allowance. An early indication of the same and passage of Claims 76 and 78-103 to issuance is therefore kindly solicited.

No fee is believed due in connection with this response. However, the Commissioner is authorized to charge all required fees, other fees under 37 C.F.R. § 1.17 and all required extension of time fees throughout pendency of this application, or credit any overpayment, to Pennie & Edmonds LLP U.S. Deposit Account No. 16-1150 (Order No. 9196-019-999).

Respectfully submitted,

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